

JAN 11 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States
OCTOBER TERM

No. 63

NELSON SIBRON,

Appellant,

—against—

THE STATE OF NEW YORK,

Respondents.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

RESPONDENTS' SUPPLEMENTAL BRIEF

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RESPONDENTS' SUPPLEMENTAL BRIEF

On oral argument the Court granted leave to appellant to file a supplemental brief directed to the question of mootness and similarly permitted the respondents to answer.

New York's paramount interest in the case lies in a construction by this Court of Section 180-a of the Code of Criminal Procedure and a determination by the Court that the statute and the practices permitted thereby do not violate either the letter or the spirit of the Fourth Amendment to the United States Constitution. For this reason we do not urge upon the Court that the appeal should be dismissed because of mootness. We content ourselves with setting forth for the information of the Court those facts concerning appellant which bear upon that question. These facts are shown in the Transcript of the Record.

Appellant was arrested on March 9, 1965 in the County of Kings (8).* In a complaint filed against him in the

* References are to the pages of the Transcript of the Record.

Criminal Court of the City of New York (1), he was charged with a violation of Penal Law, Section 1751 "in that he did feloniously and unlawfully possess a quantity of the narcotic drug, to wit: heroin as will appear from the following:" (The complaint thereafter detailed the circumstances of such posesssion).

Following a hearing on a motion to suppress in the same Court and following the denial thereof (6-21) on March 31, 1965, appellant on April 23, 1965 pleaded guilty to a violation of Public Health Law, Section 3305 in the possession of a quantity of heroin as a misdemeanor, and was sentenced as a multiple narcotics offender to the mandatory minimum sentence of six months in the Workhouse (23-26).

We subsequently received from the Department of Correction of the City of New York an information form concerning appellant which states:

City of New York
Department of Correction
100 Centre Street
New York, N. Y. 10013
Records & Statistics Division

Date: 12/6/67

Time: 10:30 A.M.

This is to verify that the following information is on record:

Name: Nelson Sibron #2-65-2030

Address: 1678 St. Johns Place, Brooklyn, New York

Age: 27 Color: W

In Custody From: 3/10/65 To: 7/8/65

Original charge 1751. Sent. 3305, 6 mos. Penty.

Remarks: In custody continuously. Released by expiration of sentence.

Signature: Martha Parker

Title: Sr. Clerk

STAMP
DEPARTMENT
OF
CORRECTION

While the Transcript of Record does not contain a statement of appellant's criminal record, he did concede during the hearing on the motion to suppress (8) that in 1956 he had been convicted of Burglary which in New York is a felony, and that he had been previously convicted in 1957 of a misdemeanor conviction for violation of Public Health Law, Section 3305 relating to the possession of narcotic drugs.

The question posed by this record, insofar as it relates to the problem of mootness, is whether appellant is so affected by the instant conviction that the doctrine of mootness should not apply (*Jacobs v. New York*, 388 US 431; *Tannenbaum v. New York*, 388 US 439).

We have referred to the fact that in the instant case appellant was sentenced as a multiple narcotics offender because of a prior narcotics conviction. Therefore the present conviction would not affect his fate should he subsequently be convicted of a narcotics offense because the provisions in the New York Revised Penal Law effec-

tive September 1, 1967 dealing with narcotics convictions, are similar to those of the former Penal Law. Thus, present Section 220.05 makes criminal possession of a dangerous drug a misdemeanor. Section 220.10 transmutes the same possession into a felony if the possession is accompanied by an intent to sell. Section 220.15 likewise creates the more serious felony of criminal possession when the possession with intent to sell is that of a narcotic drug. Section 220.20 increases the grade of the felony where the quantity possessed with intent to sell is larger. Sections 220.30 to 220.40 inclusive have the same gradations with respect to the crimes of sale of dangerous drugs and narcotic drugs. Drugs are classified in Section 220.00 as narcotic drugs, depressant or stimulant drugs and hallucinogenic drugs, all of which are termed dangerous drugs.

Should appellant in the future be convicted of a felony, the conviction presently under consideration in this case would likewise not affect his status as a multiple felony offender. Section 70.10 of the Revision, which authorizes the Court to impose more severe punishment upon a persistent felony offender, defines such persistent felony offender as one who has been previously convicted of two or more felonies. Under this statute, the instant conviction would of course not affect appellant's status under a subsequent felony conviction.

We recognize that upon the facts which we have above set forth and the law governing them it would appear that the instant appeal is moot. Nevertheless, we believe that because of the importance of the basic questions presented by the case, this Court in the exercise of its power can entertain the appeal and decide it.

It is therefore our hope that the Court will reach the merits of the case and consider and adjudicate the question of the constitutionality of Section 180-f of the Code of Criminal Procedure. If the Court does so, we of course rest upon our original brief.

DATED: Brooklyn, New York,
January 1967.

Respectfully submitted,

AARON E. KOOTZ
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of Counsel